

Internal Revenue Service  
**memorandum**

CC:TL-N-7013-89

Br4:JRDomike

date: **AUG 30 1989**

to: District Counsel, Chicago MW:CHI

from: Assistant Chief Counsel (Tax Litigation) CC:TL

subject: [REDACTED]

This responds to your memorandum dated July 27, 1989, requesting tax litigation advice.

ISSUE

The issue is whether the hospital, which is affiliated with the [REDACTED], can be required to file information returns pursuant to I.R.C. § 6033.

SUMMARY OF ADVICE

The office of the Assistant Commissioner (Employee Plans & Exempt Organizations) is seeking compliance through the efforts of certain church "umbrella" organizations, on the basis that only the entities described in the revenue procedure are exempt from the filing requirement as integrated auxiliaries of a church.

If the Assistant Commissioner's efforts fail and compliance not be forthcoming, you will advise the District Director to suspend enforcement of the returns requirement until issuance of amended regulations.

FACTS

[REDACTED] ([REDACTED]) is an exempt organization described in section 501(c)(3) of the Internal Revenue Code, affiliated with the [REDACTED] and located in [REDACTED]. Its annual revenue from patient services amounts to more than [REDACTED] % of its support. Although [REDACTED] filed a Form 990-T reporting unrelated business income and tax for [REDACTED], it did not file and refuses to file an annual information return (Form 990), claiming that it is an integrated auxiliary of the [REDACTED].

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The revenue agent's report proposes to assess the section 6652(c)(1) penalty of \$[REDACTED] and advise [REDACTED] that its exempt status may be revoked because it refuses to file Form 990. The District Director has asked your advice and concurrence to the following positions being taken in this case:

1. [REDACTED] is required under the provisions of section 6033(a)(1) to file an annual return.
2. [REDACTED] does not meet any of the exceptions from filing outlined in section 6033(a)(2).
3. [REDACTED]'s reliance on [REDACTED], does not constitute reasonable cause for failure to file required information returns.
4. If [REDACTED] does not file within the 90-day period provided in IRM 7(10)91.53(1)(e), a substitute for return should be processed and the delinquency penalty prescribed by section 6652(c)(1) should be assessed.
5. If [REDACTED]'s failure to file continues beyond the 180-day period described in IRM 7(10)91.53(1)(f), procedures should be initiated to revoke the organization's exempt status.

You enclosed for our views your proposed answer.

#### DISCUSSION 1/

Section 6033(a)(1) of the Internal Revenue Code generally requires exempt organizations to file annual information returns. Section 6652(c)(1) provides penalties for failure to file annual returns under section 6033. Revenue Ruling 59-95, 1959-1 C.B. 627, holds that failure to file a required information return may result in termination of exempt status on the ground that the organization has not established that it is observing the conditions required for continuation of exempt status.

Section 6033(a)(2) of the Code provides exceptions from filing such returns, including a mandatory exception for "churches, their integrated auxiliaries, and conventions or associations of churches." I.R.C. § 6033(a)(2)(A)(i). In addition, section 6033(a)(2)(B) empowers the Secretary to establish discretionary exceptions from filing.

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1/ For an extensive discussion, see G.J. Blaine, "The Unfortunate Church-State Dispute Over the I.R.C. Section 6033 'Exclusively Religious' Activity Test," 23:1 New Eng. Law Rev. 1 (1988).

The term "integrated auxiliary of a church" is not defined in the Code. It is defined by Treasury Regulation 1.6033-2(g)(5)(i) as an organization exempt from taxation under section 501(c)(3), affiliated with a church, and whose principal activity is exclusively religious. Note Example (1) (hospital) of Reg. § 1.6033-2(g)(5)(iv); see also Rev. Proc. 83-23, 1983-1 C.B. 687, sec. 3.01(1); Notice 84-2, 1984-1 C.B. 331.

In [REDACTED] concluded that the "exclusively religious" test in the regulation is invalid. 2/

In Rev. Proc. 86-23, 1986-1 C.B. 564, the Service set forth an additional class of organizations affiliated with a church and described under section 501(c)(3) that are not required to file an annual return under section 6033. Regulations project EE-41-86 is open currently with the intention of substituting the standards set forth in Rev. Proc. 86-23 for the exclusively religious test in section 1.6033-2(g)(5)(i). G.C.M. 39,614 (1987).

[REDACTED] does not meet the "exclusively religious" requirement of the regulation. Treas. Reg. § 1.6033-2(g)(5)(iv), Example (1). It also does not meet the requirement established by Rev. Proc. 86-23--the "internal support" requirement. For purposes of the revenue procedure, an organization is not "internally supported" if it both (1) offers services (etc.) to the general public, and (2) normally receives more than 50 percent of its support from a combination of governmental sources, public contributions, and receipts from performance of services (etc.). Id. Sec. 5. [REDACTED] both offers services to the general public and normally receives more than 50 percent of its support (actually [REDACTED] percent) in the form of receipts from performance of services.

As noted above, the office of the Assistant Commissioner (EP/EO) is seeking [REDACTED]'s voluntary compliance with the filing requirement of section 6033(a)(1). If, however, [REDACTED] declines to comply, we believe it would be inadvisable at this time for the District Director to pursue the proposed enforcement action.

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2/ Followed in [REDACTED]

[REDACTED]. In Tennessee Baptist Children's Homes, Inc. v. United States, 604 F. Supp. 210 (M.D. Tenn. 1984), aff'd, 790 F.2d 534 (6th Cir. 1986), the jury found that the principal activity was religious, rather than child care. Therefore the children's home met the requirement of the regulations.

██████████ is located in ██████████, in the ██████████ Circuit, and therefore, until new regulations issue, the ██████████ case would be controlling as to the "exclusively religious" requirement. Furthermore, the "internal support" requirement set forth in the revenue procedure should not be exposed to litigation without support in a regulation because of possible prejudice to the position.

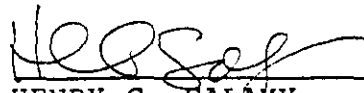
#### CONCLUSION

Therefore, we concur in your proposed memorandum to the District Director. 3/ We agree that enforcement of section 6033 return filing requirements should not be initiated with respect to this hospital until the issuance of amended regulations, and we agree with the reasons stated therein. A further reason, not stated (although it can be inferred), is that this hospital is in ██████████ and therefore the ██████████ Circuit ██████████ case is controlling, until new regulations are issued.

Your memorandum to us offers an analysis to explain why a hospital would not be considered to be an integrated auxiliary of a church. We are forwarding your memorandum to the Office of Assistant Chief Counsel (Employee Benefits and Exempt Organizations) for consideration in connection with the regulations project under section 1.6033-3(g)(5).

MARLENE GROSS  
Assistant Chief Counsel  
(Tax Litigation)

By:

  
HENRY G. SALAMY  
Chief, Branch No. 4  
Tax Litigation Division

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3/ By telephone, your attorney Jim Stanis agreed to postpone the date (originally set for August 8).